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SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

SUMMARY RECORD OF THE 8th MEETING

Held at Headquarters, New York,
on Wednesday, 30 August 1978, at 10.30 a.m.

Chairman: Mr. CUEVAS CANCINO (Mexico)

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The meeting was called to order at 11 a.m.

CONSIDERATION, PURSUANT TO PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/150, OF PROPOSALS AND SUGGESTIONS SUBMITTED BY STATES (continued) (A/AC.193/L.3)

1. Mr. ZACHMANN (Observer for the German Democratic Republic) said that his country had from the very outset supported the Soviet proposal to conclude a world treaty on the non-use of force and had actively worked for its implementation. Given the developments that had taken place in international relations, the conclusion of such a treaty had become a matter of urgency. The draft World Treaty submitted by the Soviet Union (A/AC.193/L.3) established a close relationship between the non-use of force and the cessation of the arms race, particularly in respect of nuclear weapons and other weapons of mass destruction. The draft therefore reflected the wishes of the overwhelming majority of Member States as reaffirmed at the tenth special session of the General Assembly (A/RES/S-10/2, paras. 12 and 26). The final goal of the Soviet initiative was of course to end war between States and to achieve general and complete disarmament.

2. The majority of Member States had shown a clear interest in the conclusion of a world treaty, and the statements made on the draft treaty in the Special Committee had been mainly positive. That was hardly surprising, since, despite the prohibition on the use of force laid down in the Charter of the United Nations, 120 wars and regional conflicts had broken out since 1945. There was therefore an urgent need to codify the principle of the prohibition of force, and that could best be achieved by concluding a binding world treaty based on the Soviet draft.

3. The Soviet proposal was based on the explicit obligation of Member States to promote the codification and progressive development of international law. It had been argued that the provisions of Article 2, paragraph 4, of the Charter of the United Nations would suffice and that a world treaty would not be necessary. However, the history of international relations showed that principles of international law could be enhanced by the conclusion of international treaties and the establishment of binding juridical norms. In addition, a world treaty on the non-use of force would promote political détente and further the development of international relations on the basis of peaceful coexistence, for which there was no reasonable alternative. It would also help to eliminate colonial oppression and neo-colonialist practices and to realize the right of every people to self-determination, economic independence and full sovereignty over its natural resources. Finally, it would promote peaceful co-operation among peoples, thus stimulating economic, social, scientific and technical progress. The recent joint space mission carried out by the German Democratic Republic and the Soviet Union provided an excellent example of such co-operation.

4. Mr. FERRARI-BRAVO (Italy) said that dealing with the inextricably related principles of the non-use of force and the peaceful settlement of international disputes meant touching upon the very core of international law as embodied in the Charter. The solution of virtually all issues relating to international relations depended, to a large extent, upon the approach adopted towards those two principles

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The tremendous legal and political impact of the questions being dealt with called for a patient quest for solutions based on a general consensus.

5. The available documentation regarding the opinions of Member States on the issues in question was not very extensive, and the observations received so far in pursuance of General Assembly resolution 31/9 were either general in character or related only to the non-use of force and not to the peaceful settlement of disputes, which was the other issue entrusted to the Special Committee for concurrent study. It was of the utmost importance that discussions should proceed along both tracks from the beginning. States should therefore attempt to establish their views on the question of the peaceful settlement of disputes and on an approach to that issue which would encompass the problem of the non-use of force.

6. The issues under consideration had already been examined at the United Nations in a number of contexts, both broad and narrow in scope. Recent instances were the discussion by the Special Committee on Peace-keeping Operations of the effectiveness of United Nations peace-keeping operations, which was the principal guarantee against recourse to force by individual States; the discussion of the peaceful settlement of disputes initiated at the latest session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and the proposals submitted at the special session of the General Assembly devoted to disarmament, one of which was document A/S-10/AC.1/26, introduced by 15 delegations, including Italy.

7. His delegation wished to pay a sincere tribute to the Soviet delegation for its initiative, the basic purpose of which should be acceptable to all. However, the question was rather whether the method suggested by the Soviet Union for ensuring the enhancement of the principle of the non-use of force was the one best suited to achieve that purpose. The Soviet delegation proposed the adoption of a brief treaty text restating and affirming the principle of the non-use of force, but precedent did not speak favourably of the efficacy of such a technique, as demonstrated in the case of the briefly worded Paris Pact of 1928. The lesson of that experience was that a peace-keeping system could not be reinforced through mere repetition of existing international commitments but must be completed through the careful construction of appropriate machinery for the rapid enforcement of existing obligations. What was needed was not simply to reiterate the obligations listed in Article 2, paragraph 4, of the Charter but to strengthen the powers of the Security Council by implementing to the fullest extent all the provisions of Chapter VII and, at the same time, to develop the system for the peaceful settlement of disputes outlined in Chapter VI in order to prevent the aggravation of international crises.

8. The obligation inherent in Article 2, paragraph 4, of the Charter was clear and unchallenged, and even those States accused of violating it had never denied its permanent and unconditional validity but had, rather, tried to justify their recourse to force by referring to the right to self-defence provided for in Article 51. A mere reaffirmation of an existing obligation would therefore give the false impression that time had eroded that obligation. If, on the other hand, the

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obligation set forth in Article 2, paragraph 4, were to be not only reaffirmed but also reformulated, as in the proposed draft, there would be a risk of differing interpretations of the two formulas, which would open the way to new problems. The provisions of Article 103 of the Charter would be helpful in the event of a clear conflict between the wording of a treaty and that of the Charter, but the question became more subtle when the conflict was not obvious, as in the case of the proposed draft.

9. If the wording of the finally adopted treaty text was not identical with the existing Charter provision, it could be argued that, by ratifying such a treaty, Member States would be agreeing upon an interpretation of Article 2, paragraph 4, which fixed, once and for all, the meaning of the principle of non-recourse to force. Such action divesting the Security Council of its powers should be avoided. The adoption of a universal treaty, the sole aim of which would be to restate the principle embodied in Article 2, paragraph 4, of the Charter, would entail the risk of acceptance of a disguised amendment to the Charter itself. In principle, Italy did not oppose the idea of amending the Charter in the case of out-dated or counterproductive provisions, but its basic principles should be kept untouched and the Committee should be alert to the risk of potentially harmful changes.

10. Those arguments could hardly be countered by maintaining that some restatements of the principle of the non-use of force had already been made in the context of various General Assembly resolutions or in texts such as the Final Act of the Conference on Security and Co-operation in Europe. Although those texts reformulated and amplified the ideas contained in Article 2, paragraph 4, of the Charter, the definition of aggression had, for example, been embodied in a resolution of the General Assembly, i.e., in a "recommendation" rather than an amendment to the Charter or a separate treaty, precisely in order to preserve the Security Council's freedom of action. If the Soviet Union had submitted the draft of a solemn declaration of the General Assembly, it would have been easier to accept a text along the lines of the proposed draft. However, the fact that the format chosen was that of a treaty called for a much more cautious attitude. The best way to serve the purposes sought in the proposal was to draft a General Assembly resolution rather than a treaty.

11. With regard to the draft World Treaty submitted by the Soviet Union, his delegation had major reservations concerning articles I and III. Article I did not take into account the possibility that a State might use force against another State by aiding subversion from within the territory of the latter, nor did it state clearly that the exercise of the right of self-defence, which was perfectly legal under Article 51 of the United Nations Charter, did not constitute a case of illicit recourse to force. Article III was very obscure, and his delegation was not clear as to the real significance of the reservation concerning treaties and agreements concluded earlier. The Soviet draft was also extremely vague with regard to the question of the peaceful settlement of disputes. The listing of peaceful means for the settlement of disputes in article II of the draft was incomplete in that it did not include all those listed in Article 33 of the United Nations Charter. The draft concentrated almost exclusively on the problem of the non-use of force, and such an

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approach was inadequate. Paragraphs 3 and 4 of Article 2 of the Charter were inextricably linked, and any attempt to emphasize one at the expense of the other would give rise to serious imbalances in the system established by the Charter. The fact that the United Nations had not been able to establish an efficient system for the peaceful settlement of disputes constituted a major short-coming of the Organization. It also impaired the ability of the Security Council to discharge its primary function, namely to maintain international peace and security, and individual States were tempted to use force in order to resolve disputes. It was therefore vital to make progress with regard to both the principle of the non-use of force and the peaceful settlement of disputes. With respect to the latter, if the Committee were to confine itself to the drafting of a General Assembly declaration that would not create new legal commitments, it might be possible to rely on a simple reaffirmation of existing Charter provisions without necessarily elaborating further on those provisions. However, if the Committee decided to draft an international treaty giving rise to legally binding commitments, the establishment of an efficient system to guarantee respect for such commitments was essential, and that could be achieved only through the full development of the concept of the peaceful settlement of disputes.

12. Precedents for such an approach could be found in recent treaties on the codification of international law and in the Final Act of the Conference on Security and Co-operation in Europe. The question of the peaceful settlement of disputes had been discussed by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and proposals put to that Committee should be taken into consideration. New and interesting ideas related to the prevention of international crises were to be found in documents of the special session of the General Assembly devoted to disarmament, and, as far as the peaceful settlement of disputes was concerned, his delegation reaffirmed its strong support for all the means of settlement listed in Article 33 of the United Nations Charter. Of course, much could be done to enhance the effectiveness of those means, and in particular it might be possible to establish a system of impartial fact-finding procedures that would help parties to a dispute to settle their differences through negotiation. Such conciliation procedures might require recourse to international bodies capable of ensuring the maximum degree of independence and impartiality. In that connexion, it might also be possible to strengthen the consultative and judicial functions of the International Court of Justice, which, according to Article 92 of the United Nations Charter, was the principal judicial organ of the United Nations. His delegation had made specific proposals in that respect in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

The meeting rose at 11.45 a.m.